IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

Crl.MC.No. 117 of 2007()

CRMP.2534/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM
CRIME NO.480/2006 OF KUNNAMKULAM POLICE STATION

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PETITIONER/DEFACTO COMPLAINANT :

ABDUL AZEEZ @ HASHIM BAVA,
S/O.MUHAMMED KUTTY,
VAZAKA MADATHIL HOUSE,
PURANGU, MALAPPURAM DISTRICT.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
(CRIME NO.480/2006 OF KUNNAMKULAM POLICE STATION)

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.117 of 2007

Dated this the 15th day of January 2007

O R D E R

The petitioner is the alleged victim of an offence of theft. An amount of Rs.77,500/- belonging to him was allegedly thieved. The property was recovered and produced before the learned Magistrate. The learned Magistrate did not release the amount to the petitioner, obliging the petitioner to come to this court with Crl.M.C.No.2389/2006. Another Bench of this court, as per order dated 21/08/2006 directed the learned Magistrate to consider the matter afresh and pass orders. Accordingly, the matter went back to the learned Magistrate.

2. By Annexure B order dated 24/11/2006, the learned Magistrate has now directed that the amount can be released to the petitioner subject to conditions. There is no contention that any other person is entitled to the amount. But the learned Magistrate directed release of the amount subject to conditions including a condition that the petitioner must execute a bond for Rs.1,00,000/- with two solvent sureties who were in turn directed to produce their solvency certificates.

3. The petitioner claims to be aggrieved by the impugned order. The petitioner submits that the conditions imposed are most harsh, onerous and unnecessary. No other

person has a claim that the amount seized by the police and produced before the learned Magistrate belongs to him. The petitioner is the only claimant. Prosecution does not also have any different case. In these circumstances, a direction that the sureties must produce solvency certificate may be set aside, prays the learned counsel for the petitioner .

4. In the facts and circumstances of this case, I am satisfied that the request of the petitioner is most justified. The petitioner is a victim of the offence of theft. The amount recovered is, without any dispute, one that belongs to the petitioner. No person has a contra case. The prosecution case is also the same. In these circumstances, I am satisfied that there is no justification in insisting on the condition that the sureties must produce solvency certificate. Such insistence will lead to further delay. It is sufficient, if the learned Magistrate is satisfied about the solvency and acceptability of those sureties in any manner. This Criminal Miscellaneous Case is in these circumstances allowed. It is observed that rigid insistence on production of solvency certificates by the sureties need not be made.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006